

REMARKS

Upon entry of the present amendment, the claims in the application are claims 14, 24 and 25.

The 8/4/08 OA states that the previous claims do not require the head portion to be large (wider) than the diameter of the rod portion. This has been remedied in present claims 14, 24 and 25.

Also, present claim 14 includes the subject matter of previous claims 14-23 and other changes.

Also, present claims 24 and 25 include other changes.

35 USC 103 REJECTIONS

Applicant respectfully traverses the 35 USC 103 rejections of the previous claims, especially in view of the present claims.

The 8/4/08 OA concedes that Choi fails to disclose the needles as being partially coated with a coating.

However, the 8/4/08 OA alleges “it would have been obvious to partially coat the Choi needles with a material which is different than the material of the needles so that it too would have this advantage.... It would have been obvious to partially coat the Choi needles with a material which is different than the material of the needles so that ti too would hve this advantage. With this modification, the Choi needles would include a first set of needles (e.g. the needles on the left half of the device) being made from a first material (i.e. the material of the needle itself which is labeled 1 in Gabrusenok) and a second set of needles (e.g. the needles on the right half of the device) being coated with a second material (i.e. the material of the coating which is labeled 3

in Gabrusenok), each needle being surrounded with needles whose base materials and coatings are made from different materials (the base materials of each needle is different than the coating material of each needle as indicated in the Gabrusenok abstract), the first and second material having different electrochemical properties (as indicated in the Gabrusenok abstract).”

In contrast, applicant respectfully submits that making the above modifications to Choi as suggested in the 8/4/08 OA:

- 1) do not meet the limitations of the amended claims; and
- 2) may appear to be obvious to the Examiner with hindsight after reading applicant’s specification which is not the standard of 35 USC 103 (which, in contrast, requires obviousness to the mythical PHOSITA at the time the invention was made); and
- 3) would not be obvious to the mythical PHOSITA.

1) Making the above modifications to Choi as suggested in the 8/4/08 OA do not meet the limitations of the present claims: -

Choi does not disclose:

“said head portion being wider than the diameter of said rod member” (In contrast, see Choi needles 12 and 14.); nor

“all said head portions having their major planar surface disposed in one and only one flat plane...” (See applicant’s Fig. 12. In contrast, see the head portions, if any, of: Choi needles 13A having their major planar surface disposed in a first convex plane which is not flat (Choi Figs.1 and 2A); and Choi needles 13B having their major planar surface disposed in a

second convex plane (which is not flat) and which is spaced apart from and parallel to the first convex plane (Choi Figs. 1 and 2A); nor

“each said needle being fixed in said base member so that said sharpened portion protrudes from said base member” (In contrast, the sharpened portion, if any, of Choi needle 13B does **not** protrude from the base member.); nor

“said needles including one or more first needles being made from and/or coated with a first material, and one or more second needles being made from and/or coated with a second material;” nor

“one or more third needles being made from and/or coated with a third material having a different electrochemical potential than that of said first and second materials;” nor

“each said needle being surrounded with needles whose base materials and coatings are made from different materials;” nor

“said needles are disposed in said applicator in a configuration in which adjacent needles having said sharpened portion exposed to said surface of contact with the user’s epidermis are either coated with and/or made from different materials” (In contrast, the sharpened portion, if any, of Choi needle 13B is **not** exposed to said surface of contact with the user’s epidermis, but rather is embedded in the base member.); nor

“one or more of said needles being partially covered with a coating;” nor

“the coating on one or more of said needles comprises a multilayer coating;” nor

“the material comprising said needles and/or coatings is selected from steel, copper, chromium, nickel, silver, cobalt, aluminum, magnesium, zinc, tin, titanium, vanadium, beryllium, gold, platinum, palladium, strontium, tellurium or alloys and oxides thereof” (In contrast, Choi’s needles are not made from these materials, but rather are **flexible**; Choi col. 6, line 25.); nor

“said first and second materials having different electrochemical potentials;” nor

“said partially-covered needles expose a surface of contact between each needle and a user's epidermis to at least said first and second materials”

ALL OF WHICH IS REQUIRED BY PRESENT CLAIM 14; nor

“each said needle being fixed in said base member so that said sharpened portion protrudes from said base member” (In contrast, the sharpened portion, if any, of Choi needle 13B does not protrude from the base member.); nor

“said head being wider than the diameter of said rod, (In contrast, see Choi needles 12 and 14.) and all said heads having their major planar surface disposed in one and only one flat plane which is oriented perpendicular to said first predetermined direction and to said central elongated axis of said rod” (See applicant's Fig. 12. In contrast, see the head portions, if any, of: Choi needles 13A having their major planar surface disposed in a first convex plane which is not flat; and Choi needles 13B having their major planar surface disposed in a second convex plane (which is not flat) and which is spaced apart from and parallel to the first convex plane.); nor

“said needles being partially covered with a coating;” nor

“said needles including at least a first set of needles being made from and/or coated with a first material, and a second set of needles being made from and/or coated with a second material;” nor

“said first and second materials having different electrochemical potential;” nor

“said needles being partially covered with a coating to expose a surface of contact between each needle and a user's epidermis to at least said first and second materials having said different electrochemical potentials;” nor

“at least one further set of needles being made from and/or coated with a further material having a different electrochemical potential than that of said first and/or second set of needles;” nor

“the coating on at least some of said needles comprises a multilayer coating;” nor

“said needles are disposed in said applicator in a configuration in which adjacent needles have said sharpened portion exposed to said surface of contact with the user’s epidermis are either coated with and/or made from different materials;” (In contrast, the sharpened portion, if any, of Choi needle 13B is not exposed to said surface of contact with the user’s epidermis, but rather is embedded in the base member.); nor

“the material comprising said needles and/or coatings is selected from steel, copper, chromium, nickel, silver, cobalt, aluminum, magnesium, zinc, tin, titanium, vanadium, beryllium, gold, platinum, palladium, strontium, tellurium or alloys and oxides thereof” (In contrast, Choi’s needles are not made of said materials, but rather are flexible; Choi col. 6, line 25.);

ALL OF WHICH IS REQUIRED BY PRESENT CLAIM 24; nor

each said needle being fixed in said base member so that said sharpened portion protrudes from said base member” (In contrast, the sharpened portion, if any, of Choi needle 13B does not protrude from the base member.); nor

“said head being wider than the diameter of said rod, (In contrast, see Choi needles 12 and 14.) and all said heads having their major planar surface disposed in one and only one flat plane which is oriented perpendicular to said first predetermined direction and to said central elongated axis of said rod” (See applicant’s Fig. 12. In contrast, see the head portions, if any, of: Choi needles 13A having their major planar surface disposed in a first convex plane which is not flat;

and Choi needles 13B having their major planar surface disposed in a second convex plane (which is not flat) and which is spaced apart from and parallel to the first convex plane.); nor

“said needle bases being made of steel, copper, chromium, nickel, or silver, and provided with a coat made of chromium, nickel, copper, or silver” (In contrast, Choi’s needles are not made of said materials, but rather are flexible; Choi col. 6, line 25.); nor

“at least a portion of said needles being made with solid and/or partial coats;” nor

“in the case of partial coating of said needle bases, the areas close to said sharpened portions thereof are formed by at least two materials having different electrochemical potentials;” nor

“needle bases and coats are made of chemical elements selected from a group additionally including cobalt, aluminum, magnesium, zinc, tin, titanium, vanadium, beryllium, gold, platinum, palladium, strontium, tellurium, and alloys and oxides thereof” (In contrast, Choi’s needles are not made of said materials, but rather are flexible; Choi col. 6, line 25.); nor

“said needles are arranged in said applicator in such a way that adjacent needles comprise different base and coat materials”

ALL OF WHICH IS REQUIRED BY PRESENT CLAIM 25.

However, the 8/4/08 OA (not he art) suggests it would be obvious to partially coat the Choi needles with certain materials.

Applicant respectfully submits the resulting product would still not meet the limitations of applicant’s present claims.

In contrast, the resulting product would have partially-coated Choi needles which do not meet the claim limitations quoted above, but rather which are flexible and which consist of non-electromagnetic conductive needles 13A, electromagnetic semiconductive needles 13B,

electrically conductive needles 14, magnetic conductive needles 12, and magnetic needles and magnets 11 (Choi col. 5, lines 28-33; col. 6, line 25), and which have a structure, arrangement, and assemblage that does not meet applicant's claimed limitations.

For example, if the Choi needles were partially-coated, the resulting product would **not** include:

"said head portion being wider than the diameter of said rod member; ...

all said head portions having their major planar surface disposed in one and only one flat plane which is oriented perpendicular to said first predetermined direction and to said central elongated axis of said rod member;

each said needle being fixed in said base member so that said sharpened portion **protrudes** from said base member;...

said needles including one or more first needles being made from and/or coated with a first material, and one or more second needles being made from and/or coated with a second material;

one or more third needles being made from and/or coated with a third material having a different electrochemical potential than that of said first and second materials;

each said needle being **surrounded** with needles whose base materials and coatings are made from different materials;

said needles are disposed in said applicator in a configuration in which adjacent needles having said sharpened portion exposed to said surface of contact with the user's epidermis are either coated with and/or made from different materials;

one or more of said needles being partially covered with a coating;

the coating on one or more of said needles comprises a multilayer coating;

the material comprising said needles and/or coatings is selected from steel, copper, chromium, nickel, silver, cobalt, aluminum, magnesium, zinc, tin, titanium, vanadium, beryllium, gold, platinum, palladium, strontium, tellurium or alloys and oxides thereof;

said first and second materials having different electrochemical potentials; and

said partially-covered needles expose a surface of contact between each needle and a user's epidermis to at least said first and second materials”

AS REQUIRED BY PRESENT CLAIM 14.

Furthermore, the 8/4/08 OA also concedes that Choi fails to disclose the claimed materials for the needle and/or coatings. However, the 8/4/08 OA calls attention to applicant's specification page1, line 31 to page 2, line 2, *but the 8/4/08 OA completely ignores specification page 2, lines 3-13.*

2) and 3) Making the above modifications to Choi as suggested in the 8/4/08 OA: 2) may appear to be obvious to the Examiner with hindsight after reading applicant's specification which is not the standard of 35 USC 103 (which, in contrast, requires obviousness to the mythical PHOSITA at the time the invention was made); and 3) would not be obvious to the mythical PHOSITA. :-

There is no suggestion in the art to combine Choi and Gabrusennok.

Furthermore, no PHOSITA would want to apply the partial coating of Gabrusenok to the Choi needles as described a Choi col. 5, lines 28-33, and col.6, line 25. Indeed, such a combination would be inoperable and/or would embody great technological difficulties.

Moreover, the elements in combination do not merely perform the function that each element performs separately

It is also important to note that all of Choi's and Gabrusenok's needles lack a head portion as defined by applicant's claims.

Moreover, if the prior art references as a whole do not teach, suggest or motivate combining such references as proposed by the 8/4/08 OA, then they may not be combined as proposed by the 8/4/08 OA.

Indeed, the mere fact that the prior art can be modified does not make the modification obvious **unless the prior art suggests the desirability of the modification.**

In light of the foregoing, applicant respectfully requests reconsideration of the obviousness rejection with a view toward withdrawing same, especially in view of the present claims

Conclusion

The application is now believed to be in condition for allowance, and a notice to this effect is earnestly solicited.

If the Examiner is not convinced that the application is in condition for allowance, it is respectfully requested that the Examiner promptly telephone the undersigned attorney for applicant in an attempt to facilitate the prosecution, and/or to narrow the issues for appeal, if necessary.

Favorable reconsideration is respectfully requested.

Respectfully submitted,

Date: December 12, 2008

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